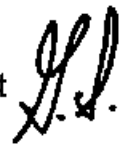


MEMORANDUM

To: Maine Board of Environmental Protection
From: George Seel, Bureau of Remediation & Waste Management
Date: November 15, 2006
RE: Rule Amendment - Chapter 691, Rules for Underground Oil Storage Facilities



I request your approval to begin rule-making proceedings to amend Chapter 691 of the Department's rules governing underground oil storage tank (UST) facilities. The objectives of this rulemaking are:

1. To make the rule consistent with changes in national and industry standards since the last update of this rule in 2004;
2. To correct errors and to clarify existing requirements and language;
3. To incorporate changes in statute;
4. To allow Maine certified UST inspectors to do minor repairs found during their inspections; and
5. To enact minimum safety standards for excavation activities at UST facilities to protect against fire, explosions, and catastrophic petroleum discharges, and to protect the structural integrity of the facility and the owner's facility investment.

Statutory Authority

The proposed updates and amendments are authorized by existing statutory authority found in 38 MRSA, subsection 561 et seq., and more specifically by subsections 563-B, 564, 565, 565-A, and 570-F.

Description of Rule

The text of the proposed amendment is provided in a separate document attached to this memorandum. See document titled "Chapter 691: Rules for Underground Oil Storage Facilities".

A number of updates and some changes in nationally accepted industry and professional organization standards have been issued since the last update of Chapter 691 in 2004. Examples include codes and standards from the National Fire Protection Association, the Petroleum Equipment Institute and Underwriter

Laboratories. These are collectively cited in Appendix S of the proposed rule amendment and throughout the rule itself.

Included in this draft are clarifications to existing language in Section 11 governing when a facility or tank which has been out of service for 12 months must be properly closed and abandoned. The specific focus of the clarifications is to draw attention to the long-standing requirement that if a facility is to remain temporarily out of service for more than 12 months, it must first be properly "mothballed" and approved by the Commissioner. There have been a number of recent instances where facilities have not complied with the above requirements, are sold, and the unwary buyer wishes to bring the abandoned facility back into service. These clarifications are an attempt to ensure facility sellers and buyers, realtors, lenders, attorneys and consulting firms doing due diligence site assessments, and certified installers understand the existing facility closure requirement, and the need to obtain prior Commissioner approval if a sale of a facility is anticipated to take longer than 12 months. This clarification may have the added benefit of helping protect buyers from unknowingly purchasing tanks whose manufacturer warrantee has been voided.

Also included in the amendments is a statutory change made in 2006 by the Maine Legislature related to out of service facilities. This change limits the exemption from the statutory siting restrictions for proposed new and replacement facility installations when located near private and public drinking water supplies. This same language is proposed to the exemptions to Chapter 691's siting criteria for replacement tanks and facilities located on a mapped significant sand and gravel aquifer. Replacement of a facility that has been out of service for more than 12 months would no longer be exempt from the siting criteria for new facilities, unless Commissioner approval was obtained to be out of service for longer than 12 months.

The proposed amendments would allow inspectors certified by the Maine Board of Underground Oil Storage Tank Installers (BUSTI) to undertake minor repairs versus only allowing such work to be conducted by certified tank installers. The proposed repairs are limited to replacement of "off-the-shelf" equipment found defective at the time of required annual facility inspections or damaged during Stage II vapor testing or tank integrity testing. Inspectors are qualified to perform these tasks by virtue of the BUSTI certification requirements. This added flexibility will frequently result in inspection deficiencies being corrected in a timelier manner and at less cost to the facility owner.

The Department is proposing standards for excavation work conducted in close proximity to tanks and piping to prevent fires and explosions, to avoid catastrophic discharges, and to ensure the structural integrity of expensive UST facilities. In so doing, the Department referenced National Fire Codes and relied upon input from the regulated community. The heart of our proposal is to require the supervision of excavation activities by a Maine certified underground tank

installer. These standards close a loophole identified by the Attorney General's office and the BUSTI, allowing anyone, qualified or not, to oversee excavation work at facilities such as gasoline stations when not associated with installation or removal. In stark contrast, the existing rule is quite clear that excavation when part of the facility's installation or closure be supervised by a Maine certified installer. These standards have been proposed for the operation and maintenance requirements of gasoline retail facilities (Section 5.D) and during the cleanup of a leak at a UST facility (Section 12).

Rule Development Process

The proposed amendments to Chapter 691 are being initiated by the Department. Input from stakeholders and other interested parties were solicited in the development of this draft. The Department met with both the BUSTI and representatives of the Maine Oil Dealers Association (MODA) early in the process this past summer to discuss possible rule changes. An earlier draft was circulated for review, comment and suggestions in August and early September. Stakeholders approached included the MODA, certified underground tank installers, the Maine Chamber of Commerce and Industry, the League of Women Voters, MDOT, EPA's Office of Underground Storage Tanks, oil remediation firms, environmental consultants, and other parties that have demonstrated an interest in the past. Comments received resulted in a number of changes that are reflected in the attached current draft.

The Department of the Attorney General has also reviewed the draft rule. This review also resulted in changes reflected in the draft before you.

As with all amendments to Chapter 691, regardless if they are substantive or not, this rule upon adoption by the Board is required by 38 MRSA, subsection 570-E to be submitted to the Legislature's Standing Committee on Natural Resources for their review.

Issues

Our contacts with MODA and other interested parties have not identified any significant or contentious issues. Few comments were received in response to our circulation of an earlier draft. Those received were very detail oriented in nature versus objecting overall with a proposed amendment.

Clarifications and highlighting existing tank and facility closure requirements in Section 11 may generate comments since some facility owners and lending institutions have been surprised in the recent past to learn of these requirements

in the course of selling or buying an out-of-service UST facility. They may be misconstrued as new requirements rather than having been in place since 1994.

Department Recommendation

We suggest that the rule be posted to public comment for 30 days until the close of business on January 19, 2007.

Estimated Time of Presentation

15 minutes